

REMARKS

Examiner rejects claim 9 as anticipated by Magnusson et al., U.S. Patent No. 6,712,249 (“the ‘249 patent”), under 35 U.S.C. §§ 102(e). Applicant respectfully asserts that such a rejection is improper. Applicant’s present application was filed on July 3, 2001. The ‘249 patent was filed on May 15, 2002, and claims priority from and, allegedly, is a continuation-in-part of application No. 09/777,232 (“the parent application”), which was filed on February 5, 2001. However, the elements Examiner believes are anticipated by the ‘249 patent are not disclosed in the parent application, as described in further detail below. Further, despite the claim of priority to the parent application, the file history of the earlier parent application indicates it was abandoned May 12, 2001, more than a year prior to the filing of the ‘249 patent. (See attached file history, tabs 2 and 3).

First, Examiner cites the ‘249 patent as disclosing “a second compartment (20) for containing speaker means (21).” No portion of the parent application discloses a second compartment containing a speaker means. In fact, the parent application states that “two speakers 22 and 24 are mounted *inside* the backpack with protective metal screens on the outside.” (Tab 1, page 6, ll. 1-2, emphasis added).

Second, Examiner cites the ‘249 patent as disclosing “the second compartment (20) is detachably [sic] from the first compartment (10) (see fig. 4).” Applicant presumes that Examiner intended to state that the second compartment was “detachably removable from” the first compartment. Proceeding under this assumption, no portion of the parent application discloses a second compartment detachably removable from the first compartment. Applicant reiterates that the parent application discloses that “two

speakers 22 and 24 are mounted *inside* the backpack with protective metal screens on the outside.” (Tab 1, page 6, ll. 1-2, emphasis added).

Third, Examiner cites the ‘249 patent as further disclosing “[w]ire take-up means (col. 3, lines 65-67, col. 4, lines 1-5) which the wire (28) may be wrapped [sic].” No portion of the parent application discloses a wire take-up means around which the wire may be wrapped. Because the speakers in the parent application are mounted *inside* the backpack, there is no suggestion of a need for a wire take-up means. The parent application simply discloses that “Velcro cable flags 112 keep the sound source cable and the speaker cables secure and covered, as shown in Figure 21.” (Tab 1, page 8, ll. 19-21).

In summary, even assuming that the filing date of the ‘249 patent is prior to the abandonment of the parent application, as the cited disclosures from the ‘249 patent were not present in the parent application upon which it claims priority, those disclosures are not prior art under 35 U.S.C. §§ 102 (b) or (e), as such disclosures occurred *after* the filing date of the present application.

As claims 10 through 12 of the present application depend from claim 9, Examiner’s present rejections need not be addressed.

CONCLUSION

In view of the foregoing, Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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